

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TCF NATIONAL BANK,

Case No. 4:10-cv-04149-LLP

Plaintiff,

v.

BEN S. BERNANKE, JANET L. YELLEN,
KEVIN M. WARSH, ELIZABETH A. DUKE,
DANIEL K. TARULLO, and SARAH
BLOOM RASKIN, in their official capacities
as members of the Board of Governors of the
Federal Reserve System; and JOHN WALSH,
in his official capacity as Acting Comptroller
of the Currency,

**DEFENDANTS' UNOPPOSED MOTION
FOR LEAVE TO FILE A COMBINED
MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
AND IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY
INJUNCTION IN EXCESS OF THE
PAGE LIMIT SET BY D.S.D. CIV. LR
7.1(B)(1)**

Defendants.

In accordance with D.S.D. Civ. LR 7.1(b)(1), Defendants Ben S. Bernanke, Janet L. Yellen, Kevin M. Warsh, Elizabeth A. Duke, Daniel K. Tarullo, and Sarah Bloom Raskin, in their official capacities, as members of the Board of Governors of the Federal Reserve System (the "Board"), and Defendant John Walsh, in his official capacity as Acting Comptroller of the Currency (the "OCC"), by and through undersigned counsel, hereby move this Court for leave to file a combined memorandum in support of Defendants' motion to dismiss and in opposition to Plaintiff's motion for a preliminary injunction in excess of the Court's page limitation, **not to exceed forty-five (45) pages**. The grounds for this motion are as follows:

1. Plaintiff filed its complaint on October 12, 2010, followed by a request for a preliminary injunction a few weeks later. Docket Nos. 1, 12, 16. Plaintiff sought and obtained permission to exceed the page limit for its brief in support of its request for preliminary

injunction, and on November 4, 2010, it filed a 35-page memorandum of law in support of its motion for a preliminary injunction. Doc. Nos. 11, 14, 16.

2. On January 27, 2011, Plaintiff filed an amended complaint seeking declaratory and injunctive relief against the OCC to prohibit it from undertaking an enforcement action against Plaintiff in conjunction with yet-to-be issued regulations by the Board as authorized by the statutory provision at issue in this case. *See* Am. Compl., ¶¶ 1, 9, 18, 98, 120, Prayer for Relief, ¶ 2 (Doc. No. 51).
3. The OCC has asked undersigned counsel to represent it in the above litigation. *See* Doc. Nos. 59, 60. The addition of the OCC as a defendant raises separate legal issues that must be addressed in response to Plaintiff's amended complaint and Plaintiff's motion for a preliminary injunction.
4. Per order of this Court, Defendants' brief in response to Plaintiff's motion for a preliminary injunction *and* the Board's answer to Plaintiff's amended complaint are both due on February 18, 2011. *See* Doc. Nos. 34, 49. Rather than filing an answer, the Board and the OCC plan to jointly file a motion to dismiss Plaintiff's complaint. In the interest of judicial economy, Defendants intend to file a combined brief both in support of their motion to dismiss and in opposition to Plaintiff's motion for a preliminary injunction.
5. An enlargement of the brief in excess of the Court's page limitation is justified in this case by a number of factors including: (1) Plaintiff has already been granted an additional ten pages for its opening brief, *see* Doc. No. 14; (2) if the Board and the OCC filed their briefs separately, each agency would be entitled to twenty-five pages just to respond to the motion for preliminary injunction; (3) the Defendants would also each be entitled to file a separate twenty-five page memorandum in support of a motion to dismiss; and (4)

lastly, the allegations contained in Plaintiff's amended complaint involve complex issues of constitutional law and an extensive factual background which merit more detailed briefing. Given all of these factors, Defendants would be unable to respond adequately within the twenty-five page limitation set by D.S.D. Civ. LR 7.1(b).

6. Defendants therefore request leave to file in excess of the Court's page limitation for purposes of their combined motion to dismiss and responsive brief, **not to exceed forty-five (45) pages**. Plaintiff does not oppose this motion. A proposed order is attached.

Dated: February 4, 2011

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2011, a copy of the Defendants' foregoing pleading and proposed order, were filed electronically via the Court's ECF system, which sent notification of such filing to counsel of record.

s/ Bradley H. Cohen
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